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**OFFICE OF PETITIONS**

In re Application of	:	
Wilhelm Kordes	:	
Application No. 10/663,484	:	
Filed: September 15, 2003	:	Decision on Petition
Title of Invention:	:	
FLORIBUNDA ROSE PLANT NAMED	:	
'KORPANCOM'	:	

This is a decision on the petition filed December 3, 2004, requesting that the above-identified application be accorded a filing date of September 15, 2003.

The application was deposited on September 15, 2003, claiming status as a continuation of prior application No. 10/020,793. However, on November 9, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice") stating that a filing date had **not** been accorded the application because the specification did not include at least one claim.

In response, Applicant files the instant petition and avers that the application incorporates by reference the entire disclosure of the prior application into the disclosure of the present application.

Applicants state that the prior application, No. 10/020,793 includes a claim. Based upon applicants' representation that the prior application includes a claim, and the entire disclosure of application No. 10/020,793 was specifically incorporated by reference in the present application on September 15, 2003, it appears that at least one claim was present in the Office on September 15, 2003, albeit in the file of another application, i.e., application No. 10/020,793. Therefore, on petition, the application may be accorded the requested filing date.

The petition is granted. The petition fee will not be refunded as the petition was not necessitated by Office error

A newly executed oath or declaration is not required under 37 CFR 1.51(b)(2) and 1.53(f) in a continuation or divisional application, provided that the specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application. See 37 CFR 1.63(d)(1).

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 15, 2003, and an indication that the application included at least one claim on filing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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Attorney/Advisor  
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